

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

KAPI'OLANI MEDICAL CENTER FOR WOMEN AND CHILDREN	Cases	37-AC-38
KAUAI MEDICAL CLINIC		37-AC-40
STRAUB CLINIC AND HOSPITAL		37-AC-41
KAPI'OLANI MEDICAL CENTER FOR WOMEN AND CHILDREN		37-AC-42

Employer-Petitioners

and

COLLECTIVE BARGAINING ORGANIZATION OF
HAWAII NURSES' ASSOCIATION

Union

WILCOX MEMORIAL HOSPITAL

Employer-Petitioner

and

Case 37-AC-39

HAWAII NURSES' ASSOCIATION AMERICAN NURSES ASSOCIATION

Union

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that Kapi'olani Medical Center for Women and Children ("Kapi'olani"), Straub Clinic and Hospital ("Straub") and Wilcox Memorial Hospital ("Wilcox") are each licensed to do business in the State of Hawaii and each is engaged in the operation of a hospital providing inpatient and outpatient medical care; that Kauai Medical Clinic ("Kauai") is authorized and licensed to do business in the State of Hawaii, and is engaged in the operation of a medical clinic providing outpatient medical care; that during the preceding twelve months ending November 30, 2003, Kapi'olani, Straub, Wilcox and Kauai each derived gross revenues in excess of \$250,000 and purchased and received goods and materials valued in excess of \$5,000 directly from points located outside the State of Hawaii. The record reflects that Kapi'olani and Straub have places of business in Honolulu, Hawaii, and that Kauai and Wilcox have places of business on the Island of Kauai, Hawaii. Based on the parties' stipulation to such facts and the record evidence, I find that it will effectuate the Act to assert jurisdiction in this matter.
3. The record shows that on August 11, 1989, in Case 37-RC-2992, the Collective Bargaining Organization of the Hawaii Nurses' Association ("CBO") was certified by the undersigned as the exclusive collective bargaining representative of a unit

of licensed practical nurses and a separate unit of registered nurses employed by Kauai Medical Group, Inc. The record shows that Kauai Medical Group, Inc. subsequently changed its name to Kauai Medical Clinic, its name in the instant case, and that both names signify the same entity. Included in the record is the most recent collective bargaining agreement between Kauai and CBO, covering licensed practical nurses, which is effective from July 1, 2000, to and including, December 31, 2003.

In Case 37-RC-3846, on August 11, 1998, CBO was certified by the undersigned as the exclusive collective bargaining representative in a unit of registered nurses and in a separate unit of licensed practical nurses of Straub Clinic and Hospital, Inc. The record shows that Straub Clinic and Hospital, Inc. is the same entity as Straub Clinic and Hospital in the instant case. Included in the record is the most recent collective bargaining agreement between Straub and CBO covering RNs, which is effective October 22, 2001, to and including October 31, 2004.

In Case 37-RC-2019, on January 23, 1975, Hawaii Nurses' Association, American Nurses' Association was certified as the exclusive collective bargaining representative of a unit of both registered and licensed practical nurses of Wilcox. Included in the record is the most recent collective bargaining agreement between CBO and Wilcox, covering both the RNs and licensed practical nurses, which is effective May 1, 2003, to and including May 31, 2006.

In Case 37-RM-110, on October 11, 1977, United Public Workers, Local 646, AFSCME, AFL-CIO, was certified as the exclusive bargaining representative of a unit of licensed practical nurses of Kapi'olani-Children's Medical Center. The record reflects that Kapi'olani Children's Medical Center is the same entity as Kapi'olani Medical

Center for Women and Children in the instant case. The record includes the most recent collective bargaining agreement covering Kapi'olani's licensed practical nurses, which is between the CBO and Kapi'olani, with effective dates of August 1, 2000, to and including July 31, 2003.

The record includes a Certification for Kapi'olani Maternity & Gynecological Hospital, dated January 6, 1971, which shows that the HNA had been certified in a unit that is not specified on the face of the document. The record shows that Kapi'olani Maternity & Gynecological Hospital is the same entity as Kapi'olani Medical Center for Women and Children in the instant case. The record contains a collective bargaining agreement between Kapi'olani and the CBO covering RNs effective December 1, 2002, to and including, November 30, 2005.

Based on such evidence showing that HNA and CBO have been certified by the Board as exclusive bargaining representatives of employees and have bargained with employers over contracts containing terms and conditions of employment and the evidence in the record showing that the employee-members of HNA and CBO have participated in the determination of amendments to bylaws of these organizations in 2003, I find that both HNA and CBO are labor organizations within the meaning of the Act. In this regard, the record also shows that the CBO was established in 1979 as the bargaining arm of the HNA.

4. All of the Employer-Petitioners and the HNA seek to amend their existing certifications of representative to reflect that the exclusive bargaining representative is

the Council on Collective Bargaining (CCB) of the HNA instead of CBO.¹ All Employer-Petitioners base their petitions on the actions of the HNA House of Delegates on October 23, 2003, in passing amendments to the HNA By-Laws, which they contend effectively merged the CBO into the HNA, and replaced the CBO with the CCB as the bargaining arm of the HNA. CBO contends that there is an injunction which prohibits implementation of such bylaws and that the CBO has not been effectively merged into the HNA and remains the bargaining representative of the nursing units of the Employer-Petitioners.

The record reflects that HNA amended its bylaws to eliminate CBO and replace it with CCB on October 23, 2003. However, it also reflects that there is an injunction in effect against the implementation of these amendments. Thus, on November 7, 2003, the United States District Court for the District of Hawaii issued a preliminary injunction enjoining the implementation of any of the amendments adopted by the HNA House of Delegates on October 23, 2003. *Ravida Benjamin et al v. Lenora Lorenzo et al*, Civil No. 03-00481 HG-LEK, *Hawaii Nurses; Association v. COB*, , Civil No. 03-00493 HG-LEK, *HNA vs. CBO*, Civil No. 03-00496 HG-LEK.² No party to this proceeding disputes that this injunction is currently in effect. As the Court's injunction prohibits the implementation of the bylaws, I can make no decision regarding the effect of the bylaws upon the representative status of CBO and CCB.

Accordingly, I am hereby dismissing these petitions.

¹ The Employer-Petitioners are all part of Hawaii Pacific Health (HPH) an employer bargaining association.

² The history of this litigation is set forth in the Court's Order.

ORDER

IT IS HERBY ORDERED that the petitions filed herein be, and they hereby are,
dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a
request for review of this Decision may be filed with the National Labor Relations Board,
addressed to the Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-
0001. This request must be received by the Board in Washington by February 20, 2004.

DATED at San Francisco, California, this 6th day of February 2004.

/s/ Robert H. Miller

Robert H. Miller, Regional Director
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Region 20
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